

Decision 06-05-013 May 11, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Qwest Communications Corporation and Qwest
Interprise America, Inc.

Complainants,

vs.

Pacific Bell Telephone Company, dba SBC
California,

Defendants.

Case 05-05-030
(Filed May 31, 2005)

ORDER EXTENDING STATUTORY DEADLINE

Summary

Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. In this proceeding, the 12-month deadline for resolving this matter is May 31, 2006. The proceeding cannot be resolved by that date due to extensive prehearing motions and discovery difficulties.

Background

Complainants, Qwest Communications Corporation and Qwest Interprise American, Inc., (collectively, Qwest or complainants) are telecommunications

carriers authorized by this Commission to provide competitive local exchange service in California.¹ They allege that they purchase collocation arrangements from defendant, SBC California, Inc., now doing business as AT&T, which allow the complainants to place equipment on SBC's premises and to interconnect with SBC's facilities. The rates SBC charges Qwest for a certain type of collocation - cageless collocation - are the subject of Qwest's complaint.

Specifically, Qwest alleged that SBC charges cageless collocation rates based on Accessibility Letter CLECC 99-200, dated May 28, 1999, which are higher than the currently applicable cageless collocation rates provided for in Accessibility Letter CLECC 00-054, as modified by Accessibility Letter CLECC 00-064. Qwest contended that it has been overcharged by about \$10 million since 2000 due to SBC imposing the higher 1999 rates on Qwest's cageless collocation arrangements.

SBC answered that, consistent with Commission directives it is charging Qwest interim collocation rates, which are subject to true up once the Commission sets final collocation rates. SBC explained that in 1999 the Federal Communications Commission established rules for collocation arrangements, and that SBC adopted interim rates for these arrangements in Accessibility Letter CLECC 99-200. The following year, 2000, this Commission decided that final collocation prices would be set in the Open Access and Network Architecture Development (OANAD) proceeding, R.93-04-003/I.93-04-002. Pending the final rates, SBC adopted another set of interim rates for cageless collocation, Accessibility Letter CLECC 00-054. At that time, the two sets of interim rates

¹ Qwest Interprise of America, Inc. is also authorized to provide nondominant interexchange service.

were expected to be superseded by final rates, with full true up for past payments, within six months when the Commission would adopt final rates. The Commission has not yet adopted the final rates.

In its complaint, Qwest contended that this dual rate system contravenes Sections 451, 453, 532, and 709 of the Public Utilities Code, and Section 251(c)(6) of the Communications Act of 1934. Qwest sought a full accounting and refund of all amounts paid in excess of Accessibility Letter CLECC 00-054 as amended by Accessibility Letter CLECC 00-064.

On August 17, 2005, Qwest filed its motion for summary judgment, contending that there were no triable issues of material fact and Qwest was entitled to judgment in its favor as a matter of law. In opposition, SBC argued that Qwest had failed to show that the interim rates, which are subject to true up, are discriminatory, and that final rates have not yet been set in the OANAD proceeding.

On October 28, 2005, Qwest filed a motion to compel SBC to respond to certain data requests. The assigned Administrative Law Judge (ALJ) convened a Law and Motion hearing on November 10, 2005. After detailed discussion of the request and of available data, Qwest agreed to substantially narrow the request and SBC agreed to prepare available data. The parties further agreed to cooperate and to be flexible in assembling data that met Qwest's needs, with the objective of completing discovery by December 31, 2005. They agreed to inform the assigned ALJ by written status report when discovery was completed.

On February 24, 2006, Qwest filed its second motion to compel. SBC opposed the motion on March 6, 2006. Qwest replied on March 13, and SBC filed a response on March 23, 2006. At issue is whether producing certain billing data

from 2000, 2001, and 2002 is overly burdensome to SBC. The ALJ granted, in part, Qwest's motion on April 21, 2006.

As the parties have not completed discovery, no further procedural schedule has been set.

OANAD Proceeding

On July 8, 2005, SBC filed in motion in the OANAD proceeding asking the Commission to set final collocation prices, with SBC noting that it has been operating under interim pricing arrangements since 1999. SBC's motion stated that the instant complaint proceeding cannot be resolved until the Commission has adopted final collocation prices. Since filing the motion, SBC and other parties to the OANAD proceeding, including Qwest, have attempted to reach a negotiated settlement of that proceeding. The Commission has granted the parties several extensions of time for further negotiations and the most current deadline for the parties' efforts is April 20, 2006.

Need for Extension

Discovery is not yet complete in this complex proceeding, and negotiations are underway in a related proceeding which could influence the outcome in this proceeding. Consequently, the proceeding cannot be completed by May 31, 2006, as required by the statute. Therefore, the Commission must extend the statutory deadline. A one-year extension is reasonable to allow for a negotiated resolution here or in the OANAD proceeding, or failing that, a fully litigated resolution here. To that end, the assigned ALJ shall take all reasonable steps to narrow the issues, complete discovery, and otherwise ensure that this case proceeds to completion.

Waiver of Comment Period

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of draft decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable Pub. Util. Code § 1701.2(d) statutory deadline for public review and comment is being waived.

Findings of Fact

1. This proceeding was initiated on May 31, 2005.
2. Based upon the 12-month statutory deadline, this proceeding must be resolved on or before May 31, 2006, unless this date is extended.
3. The current schedule allows insufficient time to resolve this proceeding before the 12-month statutory deadline runs.
4. This proceeding cannot be completed within the 12-month period due to reopening of the record. Under all the circumstances, a 12-month extension is reasonable.
5. No party opposes the extension of the 12-month statutory deadline in this proceeding.

Conclusion of Law

The 12-month statutory deadline imposed by Pub. Util. Code § 1701.2(d) should be extended, effective immediately, for an additional 12 months.

IT IS ORDERED that the 12-month statutory deadline in this proceeding, May 31, 2006, is extended for an additional 12 months.

This order is effective today.

Dated May 11, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
RACHELLE B. CHONG
Commissioners

Commissioner John A. Bohn, being necessarily
absent, did not participate.